

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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MAR 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of)

Reorganization and Revision of)
Parts 1, 2, 21 and 94 of the)
Rules to Establish a New Part 101)
Governing Terrestrial Microwave)
Fixed Radio Service)

WT Docket No. 94-148

To: The Commission

REPLY COMMENTS
OF
THE SOUTHERN COMPANY

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EXECUTIVE SUMMARY

A consensus of the Comments filed in this proceeding indicates that the microwave community would benefit from a comprehensive set of rules. However, many parties recommended other amendments to the proposed Part 101 rules that would further streamline the existing Part 21 and Part 94 microwave rules, bringing consistency and uniformity to rules. Southern believes that these recommendations are consistent with the goals of this proceeding, as they foster efficient use of the microwave spectrum, eliminate onerous regulatory filing requirements and promote equitable treatment between Part 21 and Part 94 microwave licensees. Southern agrees with other commenters that the Commission should: (1) allow Part 94 licensees to lease reserve capacity to common carriers for their customer traffic, (2) allow both common carrier and non-common carrier use and licensing of microwave transmitters; (3) extend the 21-day minor modification rule to Part 94 licensees; (4) adopt a uniform 18-month construction period for both Part 94 and Part 21 licensees; (5) adopt a uniform application for all microwave services; and (6) extend the BSTA policy to Part 94 licensees.

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**REPLY COMMENTS
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The Southern Company ("Southern"), through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's rules, submits the following Reply Comments on the above-captioned Notice of Proposed Rule Making ("NPRM").^{1/}

INTRODUCTION

1. Southern filed Comments in this proceeding generally supporting the consolidation of the Part 94 and

^{1/} In The Matter of Reorganization and Revision Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Service, WT Docket No. 94-148, Notice of Proposed Rule Making, adopted December 9, 1994, 60 Fed. Reg. 2722 (January 11, 1995), Order, DA95-140, extending the Comment date to February 17, 1995 and Reply Comment date to March 17, 1995 (February 2, 1995).

Part 21 microwave rules. However, Southern recommended that the Commission: (1) allow Part 94 licensees to lease reserve capacity to common carriers for their customer traffic, (2) allow both common carrier and non-common carrier use and licensing of microwave transmitters; (3) extend the 21-day minor modification rule to Part 94 licensees; (4) adopt the Part 94 application procedures for all microwave services; and (5) extend the Blanket Special Temporary Authority policy to Part 94 licensees.

2. Upon review of the Comments filed in this proceeding, Southern observed that other parties acquiesced to its recommendations. Additionally, other parties made notable changes to the proposed rules that would further streamline the microwave rules and would bring consistency to the Part 94 and Part 21 microwave services. Southern supports these additional changes, and appreciates this opportunity to voice its support for further changes to the Commission's proposals.

REPLY COMMENTS

3. Overall, the Comments generally support the Commission's goal to streamline and consolidate the Part 94 and Part 21 microwave rules. Southern found that there was

overwhelming support for even further rule consolidation which would result in a simpler set of regulations. Like other commenters, Southern seeks a comprehensive rule part which eliminates discrepancies and unwarranted distinctions between the Part 94 and Part 21 services. Moreover, Southern found support for its substantive rule changes recommended in its Comments.

I. Support Exists for Allowing Private Operational-Fixed Microwave Licensees to Lease Reserve Capacity to Common Carriers

4. One of Southern's recommendations sought to liberalize the shared use provisions for private operational-fixed microwave licensees. Specifically, Southern sought to broaden the shared use of private microwave facilities by allowing common carriers to lease reserve capacity on these microwave facilities.^{2/} Other commenters made the same recommendation.^{3/} As UTC noted:

[w]hen the private and common carrier microwave services were completely independent, it was appropriate . . . to limit encroachment on the frequencies available to one service by entities

^{2/} Comments of Southern at 4-7.

^{3/} Comments of Entergy Services, Inc. at 4-6, Metropolitan Water District of Southern California at 5-7, Central and South West Services, Inc. ("CSW") at 3-6, Omaha Public Power District ("Omaha") at 1 and Utilities Telecommunications Council ("UTC") at 11-16.

eligible in the other. Now, however, with most microwave bands available on nearly equal terms to entities in either service, there is less concern that a licensee should restrict its operations to either a purely "private" or a purely "common carrier" communications services. The nature of the licensee's operation, and the nature of the regulatory regime affecting that licensee, are no longer dependent on the particular frequency band in which the licensee operates. Rather the type of regulation is dependent simply on the type of service or use made of the facilities.^{4/}

5. Southern maintains that Part 94 microwave systems built with reserve capacity to meet long-term, future growth needs should be permitted to share this reserve capacity with common carrier licensees. As stated in its Comments, lease of reserve capacity to common carriers encourages efficient use of microwave spectrum because it makes use of both the system and spectrum capacity which is not needed immediately for internal requirements.

6. Southern also maintains that allowing private operational-fixed microwave licensees to lease reserve capacity to common carriers does not render the service a common carrier one.^{5/} Other commenters agreed.^{6/} Microwave systems offering customized service as well as

^{4/} Comments of UTC at 12-13.

^{5/} Comments of Southern at 6-7.

^{6/} Comments of Metropolitan Water at 6-7, Entergy at 5-6 and CSW at 5-6.

service meeting public safety requirements should continue to be classified as private carriers even though a portion of the reserve capacity may be leased to a common carrier entity. The underlying intent of the existing and proposed permissible use rules which restrict eligibility are still preserved even with the liberalization of the shared use provisions.

7. Moreover, the Commission itself advanced the theory of leasing excess capacity in its Refarming proceeding. There, the Commission proposed allowing non-commercial radio service providers to lease excess capacity where the system is used for internal communications, provided that at least 50 percent of the mobiles in the systems are for the licensee's own use.^{7/}

II. Support Exists for Allowing Non-Common Carrier Use and Licensing of Part 21 Microwave Transmitters

8. Southern's second recommendation sought to eliminate proposed Section 101.133 which contains the prohibition on licensing or using common carrier microwave

^{7/} In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Notice of Proposed Rule Making, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

transmitters for non-common carrier purposes.^{8/} Southern still sees no benefit in the retention of this rule section. Other commenters agreed.^{9/} There is agreement among the commenters that the equipment technological advances have made more spectrum capacity available, thus permitting transmitters to be used for multiple purposes.^{10/} Most persuasive is the fact that the Commission itself supports dual licensing. Current FCC rules allow the same transmitter to be licensed to different entities.^{11/} Additionally, the same transmitter can be licensed for different uses. The Commission recently stated its approval for issuing a single license to mobile service providers offering both commercial and private services on the same frequency.^{12/} Finally, the Commission recently eliminated the same rule when rewriting its Part 22 Public Mobile

^{8/} Comments of Southern at 7-10.

^{9/} Comments of Entergy at 6-9, Metropolitan Water at 7-10 and UTC at 11-16.

^{10/} Comments of Entergy at 7, Metropolitan Water at 7-8 and Southern at 8.

^{11/} See e.g., 47 C.F.R. § 90.185.

^{12/} In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, ¶ 115 (1994).

Service rules.^{13/} Accordingly, the record supports deletion of proposed Section 101.133.

III. The Comments Support Applying Similar Application and Operational Rules to Both Part 94 and Part 21 Licensees

9. Virtually all of the commenters agreed that, to the extent possible, the proposed Part 101 rules in every aspect should govern Part 94 and Part 21 licensees equally.^{14/} This is especially true with regard to rules governing application and operational procedures. Southern supports these views.

A. Support Exists for Extending the Blanket Special Temporary Authority to Part 94 Licensees

10. Several parties commented on the need for consistency in the rules governing Special Temporary Authority ("STA"), Blanket STA ("BSTA") and temporary

^{13/} See In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Service, Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service, CC Docket No. 92-115, CC Docket No. 94-46, 9 FCC Rcd 6513 (1994).

^{14/} Comments of Comsearch at 3, Western Multiplex Corporation ("Western Multiplex") at 3, C.S.I. Telecommunications ("C.S.I.") at 2, E.F. Johnson Company at 2, Pacific Bell et al. at 4-5, UTC at 4-6 and NSMA and TIA at 7-8/

authorizations. For example, the Association of American Railroads ("AAR") indicated that there should not be a distinction between private and common carrier microwave users with respect to STAs and Temporary Fixed Operation.^{15/} Other parties agreed with Southern that the BSTA policy should be extended to Part 94 licensees.^{16/}

11. One point is clear -- the Part 94 STA rules and the Part 21 temporary authorization rules are inconsistent and should be balanced to apply equally to both services.^{17/} Southern recommends adopting the Part 94 STA rules rather than the proposed Part 101.31 which does not account for emergency or unpredictable situations where a 10-day prior approval from the FCC cannot be easily obtained. In this regard, Southern supports the Comments of EDS Corporation ("EDS") suggesting that an emergency exception to the 10-day filing window for requesting an STA be carved out.^{18/} Southern continues to believe that use of the existing Part 94 procedures is simpler. It likewise

^{15/} Comments of AAR at 6.

^{16/} Comments of Omaha at 1, Metropolitan Water at 11, Entergy at 10-11 and CSW at 7-8. See also, Comments of Southwestern Bell at 5, seeking to codify the Blanket STA policy.

^{17/} See Comments of NSMA and TIA at 15-16.

^{18/} Comments of EDS at 2.

supports the Comments of Creative Broadcast Techniques, Inc. ("CBT") and the New Vision Group, Inc. ("New Vision") which seek a provision for extending the maximum STA period beyond 180 days for unforeseen circumstances.^{19/}

B. Support Exists for Extending the 21-Day Minor Modification Rule to Part 94 Licensees

12. Several parties also supported Southern's recommendation that the 21-day minor modification rule be extended to Part 94 licensees.^{20/} Southern agrees with Western Multiplex that the Commission should clarify which modifications can be made without prior FCC approval.^{21/} Moreover, since the proposed Part 101 consolidates the rules which distinguish between major and minor modifications, and both services must adhere to the same licensing procedures regarding license modifications, Southern maintains that the

^{19/} Comments of CBT and New Vision at 2-3.

^{20/} Industrial Telecommunications Association, Inc. at 6, UTC at 10, CSW at 6-7, Omaha at 1, Entergy at 9-10 and Metropolitan Water at 10-11.

^{21/} Comments of Western Multiplex at 5. See also, Comments of NSMA and TIA seeking specific clarification on allowing changes to the antenna height to be deemed as a "permissible minor modification" at 31-32. Southern also seeks clarification of what constitutes a minor modification.

Part 21 modification policies should be applied to Part 94 licensees.

C. A Uniform 18-Month Construction Period
Is Needed For Both Part 94 and Part 21
Licensees

13. The proposed rules establish a 12-month construction period for all microwave services. The proposed rule would maintain the construction period for Part 94 licensees, but would reduce the construction period for Part 21 licensees by 6 months. Several parties recommended maintaining the 18-month construction period for Part 21 licensees and extending the construction period from 12 months to 18 months for Part 94 licensees.^{22/} Southern agrees. As stated in its Comments, Southern anticipates using microwave system to provide not only internal communications, but also to carry interconnected Specialized Mobile Radio traffic throughout its service area. Constructing these paths in a region-wide system, covering four states will require additional time to implement. Southern also agrees with NSMA and TIA that an additional

^{22/} Comments of UTC at 9, Alcatel at 3, Western Multiplex at 4, C.S.I. at 2 and NSMA and TIA at 33-34. GTE and Cellular Communications of Puerto Rico, Inc. both sought to maintain the 18-month construction period for Part 21 users, but were silent on application of this period to Part 94 users (at 9 at 6, respectively). WinComm, Inc. seeks a two-year construction period (at 7).

6 months for construction will not adversely impact the public.^{23/} Accordingly, it supports a uniform 18-month construction period for both private and common carrier licensees.

D. Part 94 and Part 21 Application Procedures Should be Uniform

14. A consensus of the commenters supports using a single application form for both private operational-fixed and point-to-point microwave applicants.^{24/} Southern supports this recommendation, and believes that a uniform application will best serve the Commission and its staff. Since all the applications are now being processed in Gettysburg, Pennsylvania, the staff can handle processing more efficiently if the applications are the same for both services.

15. Southern reiterates its preference for using the Part 94 application form and procedures for both microwave services. The Part 94 filing procedures are simpler than Part 21 procedures in that there are no required secondary filings (i.e., no certification of construction completion)

^{23/} Comments of NSMA and TIA at 34.

^{24/} Comments of Comsearch at 3, E.F. Johnson Company at 2, Pacific Bell et. al. at 4, and NSMA and TIA at 11-14.

and no mandatory annual reports to be filed (i.e., no licensee qualification report, FCC Form 430).^{25/} Southern maintains that elimination of these burdensome filing requirements simplifies the microwave filing procedures. Where possible, Southern believes that the more streamlined rules should be applied to both services.

CONCLUSION

16. Southern has observed that a majority of the commenters support the Commission's efforts to streamline and simplify the existing Part 21 and Part 94 microwave rules. However, many regulations can be further streamlined by applying the same rule to both Part 94 and Part 21 microwave services. Accordingly, Southern supports adoption of the NPRM as proposed and with the recommendations suggested by it and others. Specifically, the Commission should: (1) amend proposed Section 101.35 to allow Part 94 microwave licensees to lease reserve capacity to common carriers; (2) delete proposed Section 101.133 which prohibits non-common carrier use and licensing on microwave transmitters; (3) apply proposed Section 101.59(b)(1) to

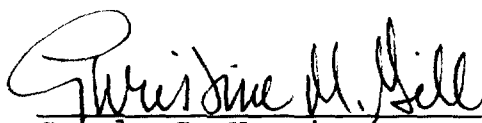
^{25/} See Comments of Digital Microwave Corporation seeking to eliminate the filing requirement for FCC Form 430 at 5. Southern supports this suggestion.

Part 94 licensees to permit their minor modification applications to be deemed authorized on the 21st day following public notice; (4) apply the 18-month construction period to Part 94 licensees; (5) extend the Blanket Special Temporary Authority policy to Part 94 licensees and (6) adopt a single application form for both Part 94 and Part 21 licensees.

WHEREFORE, THE PREMISES CONSIDERED, The Southern Company respectfully requests that the Commission act upon its Further Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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